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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200108, B-198558

DATE: January 23, 1981

MATTER OF: Availability of appropriated funds to restore shortages in Court Registry Funds

- DIGEST:
1. Funds deposited in United States Court registries are funds for which the clerk of the court is accountable.
 2. Under 31 U.S.C. § 82a-1 and § 82a-2, restorations of losses from United States court registries may be made from appropriated funds.
 3. Relief is granted under 31 U.S.C. § 82a-2 to clerk of court and fiscal officer from liability for loss of \$56,864.07 resulting from improper transfers of monies from California to New York Federal courts since error in preparing transfer orders neither amounted to lack of due care nor was the proximate cause of the loss.

[The Administrative Office of the United States Courts has asked several questions about the availability of appropriated funds to restore losses to registry funds of United States courts.] For the reasons given below, we conclude that appropriated funds are available to restore such losses. We also grant relief as requested, under 31 U.S.C. § 82a-2, to Mr. Edward M. Kritzman, Clerk of the Court for the United States District Court for the Central District of California, and Ms. Grace Kurashige, disbursing officer of the same court, in the amount of \$56,864.07, and find that that amount can be restored to that court's registry from the appropriation currently available for operation of the offices of clerks of court.

In its first request, [the Administrative Office asked] whether appropriated funds were available to restore losses in the registry funds of United States courts, suggesting that 31 U.S.C. §§ 82a-2 and 82c were proper authorities for such restorations. In that request no specific losses were mentioned. However, [the second request involved an erroneous transfer of money from the registry of the United States District Court for the Central District of California to the United States District Court for the Southern District of New York.] In that request, the Administrative Office indicated it still was reviewing the matter to determine whether to request relief of the

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particular accountable officers, and asked that we approve restoration under sections 82a-2 or 82c before it made that determination so that that money might be paid to the California plaintiffs, pursuant to an Order issued in the California Federal Court on September 13, 1979.

(Subsequently, and before we responded to the earlier requests, the Director of the Administrative Office submitted a supplemental letter requesting relief under 31 U.S.C. § 82a-2 for the Clerk and the fiscal officer. The Director concluded that the erroneous transfer occurred while Mr. Kritzman and Ms. Kurashige were acting in their official capacities under 28 U.S.C. § 2042 and that the loss was not the result of their bad faith or lack of due care since the California Federal Court had ordered them to make the transfers. The Director also requested if relief were granted, that he be permitted to restore the amount of the erroneous disbursement from available appropriations. Although no particular amount was mentioned in the request, a memorandum accompanying it shows that \$56,864.07 was improperly transferred.

The facts upon which the request for relief is based are substantially as follows. (The improper transfer occurred in a securities fraud case (SEC v. Seaboard, CV 74-567-MML (C.D. Cal., filed July 11, 1974)), in which five of the defendants were ordered to deposit funds with the California Federal Court, among which was \$50,000 from Mr. Harry B. Turner. The funds were deposited in interest-bearing preferred passbook accounts in the Security Pacific Bank in Los Angeles. The court orders requiring the deposit provided that interest earned be added to the principal every two months.)

On January 5, 1978, (four of the defendants who had deposited monies, but not Mr. Turner, entered into a stipulation providing that the monies and interest deposited in the California Federal Court registry be distributed to members of two classes of plaintiffs) (one of which was estimated as numbering 5,000 members) in a case before the New York Federal Court (Wolfson v. Solomon, 71 Civ. 1359). (The stipulation named each of the four defendants several times. Although the stipulation did not mention Mr. Turner, it did refer to the funds to be transferred as the California funds.) The Administrative Office has informed us that the words "California funds" referred to all the funds deposited in the case.)

In February and March, 1978, pursuant to court orders, (the monies that had been deposited by four of the defendants, but not Mr. Turner, were withdrawn from the savings accounts, placed in the California Federal Court's checking account, disbursed (apparently by the fiscal officer, Ms. Kurashige), and sent to the Clerk of the New York Federal Court in accordance with the stipulation.) The total amount transferred

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was \$410,348.91. On March 24 and March 29 respectively, similar orders for the deposited Turner monies were typed and prepared by fiscal officer Kurashige and submitted to Chief Judge Stephens and Judge Gray of the California Federal Court for signature. Specifically, the orders provided that the clerk draw and issue from court registry funds checks of \$27,463.80 and \$29,400.27 payable to the clerk of the New York Federal Court. These amounts included the \$50,000 deposited by Mr. Turner. Each of the checks was signed both by the Judge who rendered the order and the Clerk of the California Federal Court, Mr. Kritzman.

The Administrative Office has advised us that preparation of orders for fund transfers such as are involved here by court fiscal officers for signature by judges is in accord with the procedure used in the California Federal Court for handling transfers of funds to other United States Federal Courts. The Administrative Office also advised us that Ms. Kurashige assumed that all the "California funds", including the Turner funds, were to be transferred, apparently because the stipulation providing for the transfer made several references to the "California funds", and partial transfers in a case were uncommon.

The error in disbursement became manifest on September 13, 1979 when the California Federal Court directed that the monies deposited by Mr. Turner plus interest be paid to TSC Litigation Trust, a party in the California lawsuit. When Ms. Kurashige attempted to carry out this order, she realized that the Turner funds had been mistakenly transferred to the New York Federal Court. Ms. Kurashige immediately reported the error.

The monies transferred, including the Turner funds, totalled \$467,212.98, and were eventually paid out to two large classes of plaintiffs in the New York case. The amount received by each plaintiff varied from less than \$10 to over \$240,000. The Administrative Office says it is possible that the extra money received (the improperly transferred Turner money) and interest on it amounted to a variable percentage of the award to each plaintiff depending on the plaintiff's class, and that some of the extra monies could have gone toward legal and accounting fees. Moreover, it states that the New York parties may have assumed that the extra money constituted interest on the monies they had properly received. After attempting by request and court order to obtain sufficient information from the New York parties to determine whether collection from the distributees was feasible, the Administrative Office has concluded that recovery does not appear practical.)

Although this decision includes answers both to the general and particular questions asked by the Administrative Office, at the outset we note that this request for relief involves a situation covered by § 82a-2 of title 31, United States Code. Section 82a-1, which we will discuss together with § 82a-2, applies only to physical losses of funds such as those resulting from thefts. Moreover, § 82c is not applicable since, among other reasons, it applies to certification of vouchers, which does not appear to have been involved here.

I. Applicability of Accountable Officer Relief Statutes to Judicial Branch of Government

[The availability of funds appropriated to the Judiciary to effect restorations under 31 U.S.C. §§ 82a-1 or 82a-2 for losses of monies from court registry accounts depends in part on whether those statutes apply to the judicial branch of the Federal Government.]

Section 82a-2 of title 31 [vests in the Comptroller General the authority to relieve any disbursing officer or former disbursing officer of the United States of accountability and responsibility for any deficiency in his official disbursing account in consequence of the making of any illegal, improper, or incorrect payment where the Comptroller General finds that the payment was not the result of bad faith or lack of due care on the disbursing officer's part. Subsection (c) permits the Comptroller General to restore or otherwise adjust the account of any disbursing officer to the extent of the amount of relief granted under this section and would authorize the amount to be charged to the appropriation or fund available for the disbursing function at the time the adjustment is effected, unless another appropriation is specifically provided therefor.]

Section 82a-1 of title 31 [authorizes this Office to relieve an accountable officer from liability for physical losses if we concur with a determination by the agency head that the loss occurred (1) while the accountable officer was acting in the discharge of his or her official duties, and (2) without fault or negligence of the accountable officer.] If relief is granted, the law also authorizes adjusting the account by charging the appropriation or fund available for the disbursing function at the time the adjustment is effected, absent another appropriation specifically provided therefor.]

(Neither section 82a-2 nor section 82a-1 specifies whether judicial employees are to be governed by its provisions.) Section 82a-1 provides for relief of employees of departments or independent establishments. Though these terms are not defined for purposes of the statute, we have found them broad enough to include employees of the Judiciary. B-191440, May 25, 1979. Section 82a-2 contains similar language. It covers employees of any "department, agency, or independent establishment." In contrast to these statutes is the language of section 82b, a related statute which we have held does not apply to the judicial branch. B-191440, supra. There, Congress excluded the Judiciary by specifying that the section applies only to "disbursing officers under the executive branch of the Government."

A comparison of the language of section 82b with that of sections 82a-2 and 82a-1 supports the view that the application of sections 82a-2 and 82a-1 was intentionally not limited to the executive branch. Therefore, we agree that sections 82a-2 and 82a-1 are applicable to the judicial branch. (31 U.S.C. § 1202, which permits restoration when relief has not been granted but the amount of the loss turns out to be uncollectable, expressly applies to the Judiciary. 31 U.S.C. § 1201(c).)

Assuming the general applicability of sections 82a-1 and 82a-2 to the Judiciary, it next must be determined whether funds in court registry accounts are funds with respect to which clerks of courts and disbursing officers are accountable officers. An accountable officer is generally considered to be any Government officer or employee, civilian or military, who by reason of his employment is responsible for, or has custody of, Government funds. B-188894, September 29, 1977. (In the case of registry funds, the clerk of the court has custody of these funds and acts as an agent of the Government.) Drew Chemical Corporation v. M/V Pacific Horizon, 84 F.R.D. 127, 129 (D.C.C.Z. 1979).

(Registry funds are funds which are being held by the Government as statutory trustee for the rightful owners.) 28 U.S.C. § 2041. (The fact that the Government has no beneficial interest in these funds does not preclude considering them to be monies for which a clerk of court would be accountable.) In this regard, this agency considers funds of a private person held by the United States to be funds for which an officer of the United States can be accountable. Accordingly, we also consider funds in court registry accounts held in trust by the United States to be funds for which a clerk of court can be accountable.)

II. Relief of the Clerk of the Court and the Fiscal Officer
under 31 U.S.C. § 82a-2

Losses resulting from improper payments such as the one in question are covered by 31 U.S.C. § 82a-2. As discussed above, section 82a-2 permits relief of responsible accountable officers and restoration of losses if an improper payment is not the result of bad faith or lack of due care. In this regard we have held that relief should be denied when an accountable officer's lack of due care is the proximate cause of an erroneous payment. 54 Comp. Gen. 112, 115 (1974). As Ms. Kurashige personally handled the transaction in question and [no facts are present which suggest bad faith or lack of due care on the part of the Clerk.] Mr. Kritzman, [we conclude that he may be relieved from liability for the \$56,864.07 loss.] [Although we also conclude that Ms. Kurashige acted in good faith, the question of whether she exercised due care is a more difficult one.]

At the time the loss occurred, the usual procedure in the California Federal Court for transferring court registry funds was to have Ms. Kurashige or someone in her office prepare a transfer order, which included specification of the amount to be transferred, and then to have the order transmitted to a judge for signature. The judge who signed the order would not necessarily be the judge who presided over the case for which the funds were originally deposited.

This was the procedure followed for the transfer of the Turner funds. [Ms. Kurashige herself prepared the orders based on information in the January 5, 1978 stipulation providing for the transfer of the "California funds" to the New York Federal Court. The orders were then transmitted to a judge.]

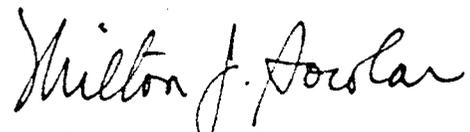
Had the stipulation been followed more carefully, the improper transfer would have been avoided. [However, we do not think the mistake resulted principally from Ms. Kurashige failing to exercise due care.]

[The stipulation was confusing;] even though it referred several times by name to the parties whose funds were to be transferred, that is, to the four defendants whose funds had been deposited in the California Federal Court registry, and neither mentioned Mr. Turner nor referred to his funds, the term "California funds" was used to describe the funds to be transferred. Although the stipulation limited the meaning of that term, as used in the stipulation, in a way which excluded the Turner funds, the term [is ambiguous in that, standing alone, it is not inconsistent with inclusion of the Turner funds.]

This ambiguity was exacerbated by the matter's complexity and the usual procedure of transferring all the funds in a case. We think these factors could have led Ms. Kurashige to the not unreasonable conclusion that all the funds should have been transferred. In this connection, the Administrative Office transmitted to us a letter from Judge Malcolm M. Lucas of the California Federal Court, intended to support the request for relief of Ms. Kurashige and any other members of the Clerk's office involved in the erroneous transfer. Judge Lucas stated he had conferred with Judge Gray of the same court and both agreed that the erroneous transfer was not an act of negligence. The Judge also stated that the transfer in question arose in a "longstanding and unusually complex litigation with many persons, financial institutions and court cases affected." Moreover, he mentioned that partial transfer of funds in a case was "extremely unusual."

Finally, we do not think Ms. Kurashige's error in preparing the orders was the proximate cause of the loss. (This is also the conclusion of the Director of the Administrative Office.) The monies could not have been transferred without the approval of the court. The fiscal officer's error was in effect adopted in the Order signed by the judges and the disbursement complied with the terms of the Order. Although it is unclear whether the procedure used provided the judges who signed the orders an opportunity to review the supporting papers, it seems to us that had they read the stipulation with due care, the error would have been discovered.)

In sum, we concur with the administrative determination that Ms. Kurashige exercised due care and conclude that she may be granted relief for the \$56,864.07 improperly transferred. We further conclude that that amount can be restored to the California Federal Court's registry from the appropriation currently available for the operation of the offices of clerks of court.)



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